

AMENDED IN SENATE MAY 3, 2005  
AMENDED IN SENATE APRIL 21, 2005  
AMENDED IN SENATE MARCH 29, 2005

**SENATE BILL**

**No. 369**

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**Introduced by Senator Simitian**

February 17, 2005

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An act to add Part 3.7 (commencing with Section 71175) to Division 34 of the Public Resources Code, relating to ecological labeling.

LEGISLATIVE COUNSEL'S DIGEST

SB 369, as amended, Simitian. Ecological labeling.

Existing law provides labeling requirements for various products, including, but not limited to, prohibiting a person from selling a plastic bag that is labeled as "biodegradable," "compostable," "degradable," or as otherwise specified, unless, at the time of the sale, the plastic bag meets a current ASTM standard specification for the term used on the label.

This bill would require the California Environmental Protection Agency to ~~establish a Commission on Ecological Labeling and would require the commission to~~ enter into a contract, using a competitive bid process, with a vendor *that meets specified standards*, to award the Green Bear Eco-Label to a product or service that meets ~~the criteria to be developed and adopted by the commission or is subject to a determination by a specified panel of experts~~ *vendor. The bill would set minimum standards, as specified, that a product must meet in order to be awarded with a label.*

The bill would require the vendor to adopt criteria *based on a life cycle approach* for awarding a label to a product or service and would specify a procedure for adopting and revising the criteria.

The bill would allow a producer or distributor to present a proposal or application to the vendor for an award of a label to a product or service. *The bill would require the proposal or application to contain data produced by an independent certified laboratory that are reliable and capable of replication by a 3rd party demonstrating that the product or service meets or exceeds the adopted criteria.* The bill would require the vendor to ~~convene an independent panel of experts to make certain findings based on the documentation submitted by the applicant and supporting market and environmental research criteria inspect the proposer's or applicant's facility and to submit the proposal or application to a peer review process.~~ The bill would require the panel, upon receipt of a proposal or application, to prepare a preliminary finding of whether the product or service should be awarded a label, and would require the vendor to conduct a hearing regarding the finding made by the panel. The bill would set certain minimum standards, as specified, that a product must meet before being awarded a label. The bill would require the vendor to award a label to a product or service, if the vendor determines the product or service meets or exceeds the ~~environmental~~ criteria adopted by the vendor. *The bill would require the vendor to make available to the public the award criteria, assumptions, methods, and data used to evaluate the product that was awarded a label. The bill would require the vendor to conduct an outreach program to educate the consumers by providing information on the environmental benefits and impacts of a product awarded with a label.*

~~The bill would provide that if a producer or distributor presents a proposal or application to the vendor for an award of a label to a product or service for which the commission has not adopted criteria, the vendor would be required to consult with the panel of experts, as specified, conduct a hearing, and award a label to a product or service, if the vendor determines the product or service has significantly less adverse environmental impacts than a competing product or service.~~

The bill would authorize the vendor to charge a fee to a producer or distributor who presents a proposal or application to the vendor for an award of a label to a product or service. The bill would require the ~~commission~~ agency, in consultation with the vendor, to set the fee, as specified, ~~and with~~ an additional 3% surcharge to cover the

administrative costs of the ~~commission~~ agency. *The bill would prohibit setting the fee at a level that would be cost-prohibitive for a small or a medium size business applying for a label.*

The bill would authorize the vendor to expend the fee to implement the contract.

The bill would require the vendor to forward the surcharge to the agency, for deposit in the Eco-Label Fund, which the bill would create in the State Treasury. The bill would authorize the agency to expend the revenues in the Eco-Label Fund, upon appropriation by the Legislature, for the *agency's* ~~commission's~~ costs in implementing the act.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Part 3.7 (commencing with Section 71175) is  
2 added to Division 34 of the Public Resources Code, to read:

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PART 3.7. GREEN BEAR ECO-LABEL ACT

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CHAPTER 1. LEGISLATIVE FINDINGS AND INTENT

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71175. The Legislature finds and declares all of the  
9 following:

10

(a) Producers and distributors should be encouraged to  
11 produce and distribute environmentally sound products,  
12 including goods and services.

13

(b) Market forces are excellent arbiters of consumer choice  
14 when consumers have sufficient and accurate information upon  
15 which to base their decisions.

16

(c) Polling indicates that a large percentage of consumers, if  
17 given reliable information, will choose an environmentally  
18 superior product over another similar product, even if the cost is  
19 higher.

20

(d) There is much disinformation and false labeling of  
21 products, so that consumers are generally confused as to which  
22 product may be better or less damaging to the environment.

23

(e) *The International Organization for Standardization (ISO)*  
24 *standards for ecolabeling were set by dozens of countries*

1 *working throughout the 1990s to develop standards for*  
 2 *sustainable environmental management. ISO 14020 enunciates a*  
 3 *set of principles that must be followed by any practitioner of*  
 4 *environmental labeling, while ISO 14024 specifies the*  
 5 *procedures and principles that third-party certifiers, or*  
 6 *ecolabelers, must follow. Among the most important of these*  
 7 *provisions are those related to the avoidance of financial*  
 8 *conflicts-of-interest, the use of sound scientific methods and*  
 9 *accepted test procedures, and openness and transparency in the*  
 10 *setting of standards.*

11 71175.1. It is the intent of the Legislature that:

12 (a) This act sets the minimum standards that must be met for a  
 13 license to be issued.

14 (b) The California Environmental Protection Agency may  
 15 enter into a contract with one or more vendors to implement this  
 16 part.

17 (c) Within a particular product category, the vendor can issue  
 18 zero, one, or numerous licenses, depending on the number of  
 19 submissions that meet the minimum standards.

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## 21 CHAPTER 2. DEFINITIONS

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23 71176. For purposes of this part, the following definitions  
 24 shall apply:

25 (a) “Agency” means the California Environmental Protection  
 26 Agency.

27 ~~(b) “Commission” means the Commission on Ecological~~  
 28 ~~Labeling established pursuant to Section 71177.~~

29 ~~(e)~~

30 (b) “Label” means the Green Bear Eco-Label that may be  
 31 awarded by the vendor pursuant to this part.

32 ~~(d)~~

33 (c) “Vendor” means the entity awarded a contract by the  
 34 ~~Commission on Ecological Labeling~~ agency pursuant to Section  
 35 71177.

36

## 37 CHAPTER 3. GREEN BEAR ECO-LABEL REQUIREMENTS

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39 71177. (a) The agency shall ~~establish a Commission on~~  
 40 ~~Ecological Labeling~~ to prepare a request for a proposal to enter

1 into a contract with a vendor to award the Green Bear Eco-Label  
2 pursuant to this part. The request for a proposal shall authorize  
3 the vendor to charge a fee pursuant to Section 71181.

4 (b) Before issuing a request for a proposal pursuant to  
5 subdivision (a), the ~~commission~~ agency shall develop  
6 performance criteria for the vendor's implementation of the  
7 contract that shall be annually achieved by the vendor.

8 (c) *The request for proposal shall require the vendor to*  
9 *submit, in writing, verifiable information establishing both of the*  
10 *following:*

11 (1) *The vendor's capacity to evaluate products using objective*  
12 *scientific methods.*

13 (2) *The vendor's compliance with all of the following:*

14 (A) *Standards set forth in ISO 14020 and 14024.*

15 (B) *Criteria for third-party certifiers of environmentally*  
16 *preferable products established by the United States*  
17 *Environmental Protection Agency.*

18 (C) *Criteria set by bona fide ecolabeling bodies of the Global*  
19 *Ecolabeling Network.*

20 (d) The ~~commission~~ agency shall enter into a contract pursuant  
21 to this section using a competitive bid process, with either a  
22 profit or not-for-profit entity, to award the Green Bear Eco-Label  
23 pursuant to this part. The contract shall be for a term of five  
24 years, except that the ~~commission~~ agency shall terminate the  
25 contract, upon 90 days written notice, if the vendor does not  
26 achieve the performance criteria developed pursuant to  
27 subdivision (b).

28 71178. (a) The vendor shall, in consultation with *businesses,*  
29 *nongovernmental environmental organizations, and scientific,*  
30 *economic, standardization, consumer protection, and health care*  
31 *institutions, adopt criteria pursuant to this section for awarding a*  
32 *label to a product or service.*

33 (b) When adopting criteria pursuant to this section, the vendor  
34 shall do all of the following:

35 (1) *Conduct research into the product's or service's life cycle*  
36 *to outline environmental, technical, market, and economic*  
37 *considerations associated with the product category.*

38 (2) ~~Issue a draft criteria that addresses the environmental~~  
39 ~~issues identified in the research.~~

1     (2) *Develop, through an open and public process involving key*  
2 *stakeholders, including, but not limited to, businesses, and*  
3 *environmental and consumer groups, and issue a draft criteria*  
4 *that addresses the environmental issues identified pursuant to*  
5 *subdivision (a).*

6     (3) Provide a four to eight week period for public review of  
7 the draft criteria and distribute the draft criteria directly to  
8 stakeholders.

9     (4) Consider all comments submitted to the vendor during the  
10 review period conducted pursuant to paragraph (3) and revise the  
11 criteria accordingly.

12     (5) After the review period is completed, publish the final  
13 criteria.

14     (c) *The criteria adopted shall be based on a systems or life*  
15 *cycle approach that evaluates the environmental impacts,*  
16 *including, but not limited to, energy and resource uses, and*  
17 *emissions to air, water, and land, of a product in each of the*  
18 *product life cycle stages including production, distribution, use,*  
19 *and eventual disposal or recycling of the product. The criteria*  
20 *shall require all of the following:*

21     (1) *That the environmental benefits of a product outweigh the*  
22 *cumulative environmental impacts of the product as the product*  
23 *passes through each of its life cycle stages.*

24     (2) (A) *That the product being evaluated meets the*  
25 *performance standards of a typical product that is used for the*  
26 *same purpose as the product being evaluated.*

27     (B) *The vendor may establish a product's performance*  
28 *standard, if there is no suitable performance standard for the*  
29 *product being evaluated.*

30     (3) *Compliance with the Federal Trade Commission's Guides*  
31 *for the Use of Environmental Marketing Claims (Part 260 of*  
32 *Title 16 of the Code of Federal Regulations).*

33     (d) (1) The vendor may revise any criteria adopted pursuant to  
34 this section at any time if significant technical, *scientific*, or  
35 market developments occur that justify revising the criteria.

36     (2) The vendor shall review the criteria adopted pursuant to  
37 this section at least once every three years to ensure the criteria  
38 continues to be relevant and stringent, and may reconfirm, revise,  
39 or revoke the criteria in accordance with this part.

1 (3) When revising criteria pursuant to this subdivision, the  
2 vendor shall consult with the producer or distributor that  
3 produces or distributes a product or service that has received a  
4 label pursuant to this part and with any other interested party.

5 71178.1. The vendor shall not award a Green Bear Eco-Label  
6 to a product that does not meet all of the following minimum  
7 standards:

8 (a) The manufacturer of the product shall have in place an  
9 end-of-life program that would require the manufacturer to take  
10 the responsibility for recycling the product or that the design of  
11 the product is such that it is fully recycleable.

12 (b) The manufacturer has an established business plan for  
13 ensuring that the product is recycled.

14 (c) The product contains no chemicals listed pursuant to  
15 Section 25249.8 of the Health and Safety Code.

16  
17 CHAPTER 4. ECO-LABEL AWARD PROCEDURE

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19 71179. (a) A producer or distributor may present a proposal  
20 or application to the vendor for an award of a label to a product  
21 or service.

22 ~~(b) The vendor shall convene an independent panel of experts,~~  
23 ~~which shall meet quarterly. The panel shall make any findings~~  
24 ~~required pursuant to this part based on the documentation~~  
25 ~~submitted by the applicant, and supporting market and~~  
26 ~~environmental research. If a similar product or service has been~~  
27 ~~certified previously, the panel shall require an applicant's product~~  
28 ~~or service to meet the established or equivalent criteria.~~

29 ~~(c) Upon receipt of a proposal or application, the panel of~~  
30 ~~experts shall prepare a preliminary finding of whether the~~  
31 ~~product or service should be awarded a label, in accordance with~~  
32 ~~the criteria adopted pursuant to Section 71178.~~

33 ~~(d) The vendor shall conduct a hearing regarding the finding~~  
34 ~~made by the panel pursuant to subdivision (c).~~

35 ~~(e) After conducting a hearing pursuant to subdivision (d), the~~  
36 ~~vendor shall award a label to a product or service, if the vendor~~  
37 ~~determines the product or service meets or exceeds the~~  
38 ~~environmental criteria specified in the criteria adopted pursuant~~  
39 ~~to Section 71178.~~

1 (b) The proposal or application shall contain data  
 2 demonstrating that the product or service meets or exceeds the  
 3 criteria adopted pursuant to Section 71178. The data shall be  
 4 from an independent certified laboratory and shall be reliable  
 5 and capable of replication by a third party.

6 (c) Upon the receipt of a proposal or application, the vendor  
 7 shall do both of the following:

8 (1) (A) Inspect the proposer's or applicant's facility to verify  
 9 compliance with the criteria adopted pursuant to Section 71178.

10 (B) The vendor shall reject a proposal or application if the  
 11 proposer or applicant fails to provide access to its facility to the  
 12 vendor.

13 (2) Submit the proposal or application to a peer review  
 14 process with representation from all interested stakeholders,  
 15 including, but not limited to, businesses and environmental and  
 16 consumer groups.

17 (d) Upon a satisfactory determination that a product or  
 18 service meets or exceeds the criteria adopted pursuant to Section  
 19 71178, the vendor shall award a label to the product or service.

20 71180. Upon the issuance of a label to a product or service,  
 21 the vendor shall do both of the following:

22 (a) Provide to the public, in an easily accessible and  
 23 understandable format, the award criteria, assumptions,  
 24 methods, and data used to evaluate the product or service.

25 (b) Conduct an outreach program to educate the consumers  
 26 on the product or service by providing information concerning  
 27 the environmental benefits and impacts associated with the  
 28 product or service.

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#### CHAPTER 5. FEES

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32 71181. (a) The vendor may charge a fee, in the amount  
 33 specified by the ~~commission~~ agency, to a producer or distributor  
 34 who presents a proposal or application to the vendor for an award  
 35 of a label to a product or service pursuant to Section 71179.

36 ~~(b) The commission,~~

37 (b) (1) The agency, in consultation with the vendor, shall set  
 38 the fee in amount that is sufficient to cover the vendor's costs to  
 39 implement this part, including a reasonable profit margin, and an  
 40 additional 3-percent surcharge to cover the administrative costs

1 of the ~~commission~~ agency. Except as provided in subdivision (c),  
2 the vendor may expend the fee revenues collected pursuant to  
3 this section to carry out the contract entered into with the  
4 ~~commission~~ agency.

5 *(2) The fee shall not be set at the level that would be*  
6 *cost-prohibitive for a small or a medium size company to apply*  
7 *to the vendor for a label.*

8 (c) The vendor shall forward the surcharge to the agency, for  
9 deposit in the Eco-Label Fund, which is hereby created in the  
10 State Treasury. The revenues in the Eco-Label Fund may be  
11 expended by the agency, upon appropriation by the Legislature,  
12 for the ~~commission's~~ agency's costs in implementing this part.